

- SUBJECT:** Civil remedies for a municipal floodplain violation
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 6 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez, Sanford
0 nays
1 absent — Anchia
- WITNESSES:** For — Majed Al-Ghafry and Savita Rai, City of San Antonio; Wes Birdwell, Texas Floodplain Management Association; J. Frank Davis; Ernie Garcia; Steve Graham, San Antonio River Authority; (*Registered, but did not testify*: John Cantu and Jeff Coyle, City of San Antonio; Seth Mitchell, Bexar County; T.J. Patterson, City of Fort Worth; Richard Perez, The Greater San Antonio Chamber of Commerce)

Against — None
- BACKGROUND:** Local Government Code, sec. 54.012, allows municipalities to bring a civil action for the enforcement of health and safety ordinances on:
- public safety, health, or fire safety relating to a building;
 - land zoning;
 - deteriorated structures or improvements;
 - accumulation of matter that creates breeding or living places for insects and rodents;
 - businesses related to sexual stimulation or gratification; and
 - certain pollutants; and
 - implementing civil penalties for violations of health and safety ordinances classified as a class C misdemeanor (maximum fine of \$500).
- DIGEST:** CSHB 1554 would allow a municipality to file civil action to resolve the violation of an ordinance relating to floodplain control and administration, including an ordinance regulating the placement of a structure, fill, or other materials in a designated floodplain.

In addition to any necessary and reasonable actions authorized by law, a municipality could bring a property into compliance with a floodplain ordinance by doing the work necessary to repair, remove, or demolish a structure, fill, or other material that was illegally placed in the area designated as a floodplain. The municipality could file a lien on the property for the assessed costs of the work done to abate the violation that would accrue interest at an annual rate of 10 percent until the municipality was paid.

A municipality could file a lien under CSHB 1554 only if the owner of the property failed to comply with the floodplain ordinance after the municipality gave the owner reasonable notice and opportunity to comply.

The lien filed under CSHB 1554 would take priority over other liens on the property if the municipality filed written notice of the lien with the county clerk of the county in which the property was located. The lien would be a privileged lien subordinate only to tax liens and liens for street improvements. The bill would require notice of the lien to be recorded stating the name of each property owner, if known, the legal description of the property, and the amount due to the municipality.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 1554 would allow cities to better enforce floodplain ordinances. Currently, a city can only assess a fine of up to \$500 for a floodplain violation as a class C misdemeanor offense. Under municipal court, the judge cannot order a property owner to remove infill violating floodplain ordinances. If a city files a lien against a property under a city ordinance, the city would not necessarily have the ability to foreclose on the lien if the property owner chose not to pay it.

CSHB 1554 would give municipalities the authority to stop infill in floodplains immediately instead of waiting until after the damage had been done. The bill would allow a district judge under Local Government Code, ch. 54 to order a property owner to remove floodplain infill and order a fine for every day the property owner did not comply with floodplain ordinances.

The current \$500 fine for a class C misdemeanor does not cover all the costs a city may incur. When property owners and developers illegally fill in floodplains, they alter the watershed, which causes flood waters to

exceed expected levels, endangering the lives of those living nearby. Violations of city floodplain ordinances can cause millions of dollars in property damage, environmental assessment, clean-up, and other costs for a city. Floodplain violations are common, with the City of San Antonio having investigated more than 200 cases of illegal fill in recent years.

The bill would give municipalities the same civil action authority over floodplain ordinance violations that they have over many other ordinance violations. Authorizing cities to place a lien on properties and to foreclose on the lien under ch. 54 would allow cities to recover costs they otherwise would never recover. CSHB 1554 would give cities the authority to place a lien on a property only if the property owner did not comply with the floodplain ordinance after a city gave them reasonable notice and opportunity to comply.

**OPPONENTS
SAY:**

CSHB 1554 would give municipalities too much power over property owners. The bill does not define how much notice would be considered “reasonable,” nor what would constitute the “opportunity” to comply with the ordinance. Current law only requires property owners to receive notice of a lien already placed on their property. CSHB 1554 would create an unreasonable burden for a property owner to prove that they were not in violation before the city placed a lien on the property for whatever costs it assessed to remedy the violation. It amounts to a cease-and-desist order that would contribute to government overreach.

NOTES:

The committee substitute differs from the bill as filed in that it would:

- allow a municipality to file a civil lawsuit to resolve a floodplain ordinance violation;
- define ordinance abatement as “including the repair, removal or demolition of a structure, fill, or other material illegally placed in the area designated as a floodplain”;
- remove a provision in the bill as filed that would have allowed a municipality to file suit to foreclose the lien and recover the unpaid costs and interest.

A similar bill, SB 1087 by Campbell, is pending in the Senate Intergovernmental Relations Committee after a hearing on April 10.